

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

IN THE MATTER OF

Vineland Chemical Company
Superfund Site

Donald C. and Andrea J. Martelli,
Respondents

ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE WITH
REQUEST FOR ACCESS

INDEX NO.
CERCLA-02-2005-2021

Proceeding Pursuant to Section
104(e)(5) of the
Comprehensive Environmental,
Response, Compensation and
Liability Act of 1980, as amended
by the Superfund Amendments and
Reauthorization Act of 1986,
42 U.S.C. §9604(e)(5).

JURISDICTION

1. This Administrative Order ("Order") is issued to Mr. Donald C. and Mrs. Andrea J. Martelli ("Respondents"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C. §9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.400(d)(4.) This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, dated January 23, 1987, redelegated to the Regional Administrator of EPA, Region II on May 11, 1994 by EPA Delegation No. 14-6, and further delegated to the Director of the Emergency Response and Remedial Division.



STATEMENT OF PURPOSE

2. This Order requires Respondents to grant EPA and its authorized representatives entry and access to the properties described in Paragraph 3 below ("the Properties") located in Vineland, New Jersey for the purpose of taking a response action at the Vineland Chemical Company Site ("the Site".) EPA will excavate arsenic-contaminated soil from the Properties and remove the contaminated soil from the Properties for treatment at another location. This Order further requires Respondents to refrain from interfering with access to the Properties by EPA and its authorized representatives for the purposes set forth in this Order.

FINDINGS

3. Respondents Donald C. Martelli and Andrea J. Martelli are the owners of the Properties identified as Block 147, Lot 1 and Block 172, Lot 8 on the City of Vineland Tax Map, which are part of the Site.

4. Respondents are "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. On September 1, 1984, the Site was placed on the National Priorities List of uncontrolled hazardous substance releases, 40 CFR Part 300, Appendix B, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. §9605(a).

6. Sampling data collected and analyzed during the Remedial Investigation of the Site indicated the release of high levels of arsenic in the soil, sediments and groundwater at the Site. Arsenic is a hazardous substance as defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601 (14).

7. In September 1989, EPA issued a Record of Decision ("ROD") selecting a remedy for the Site. Four remedial phases or operable units were identified including Groundwater, On-site Soils, River Areas and Union Lake. The selected remedial actions included pumping and treatment for the Groundwater, in-situ flushing for the On-Site Soils, excavation of sediments to begin soon after arsenic flow in the groundwater to the Blackwater Branch is stopped for River Areas, and sediment removal for Union Lake.

8. In September 2001, an Explanation of Significant Differences ("ESD") was issued for the Site. The ESD changed the in-situ flushing remedy for On-Site Soils to excavation and ex-situ soil washing.

9. EPA has investigated the Respondents' Properties which are adjacent to the former Vineland Chemical Company plant site. Sampling data indicate that greater than 150,000 tons of arsenic contaminated sediments and soils are present in the stream channel and associated flood plain and wetland areas of the Blackwater Branch on the Respondents' Properties. The cleanup level is 20 parts per million of arsenic while levels as high as 70,500 parts per million of arsenic have been found on one of the Respondents' Properties. Most of the arsenic contamination is in the 200-300 parts per million range.

10. EPA is conducting response actions to eliminate the human health and ecological risk associated with the arsenic contamination. These actions include the remedial actions identified in the 1989 ROD and 2001 ESD which are excavation of the contaminated soils and sediments and removal of the contaminated material from the Properties to another area of the Site for treatment by soil washing or for off-site disposal.

11. To perform the remedial actions described above, EPA employees, agents, contractors and other representatives must enter the Properties. The activities for which entry is required are described in detail in Paragraph 20. Activities include sampling, surveying, and construction of a temporary roadway and fencing. EPA will also excavate the contaminated soils and sediments in the streambed of the Blackwater Branch and the surrounding wetlands on the Properties, will remove the contaminated material from the Properties and will restore the Properties.

12. EPA has implemented a new soil washing technology for the plant site work and has found the technology to be highly successful. The soil washing technology will, therefore, be used for cleanup efforts in the River Areas Operable Unit. The first phase of the River Areas Operable Unit cleanup effort includes work on the Properties owned by Respondents.

13. In September 1999, Respondents granted access to EPA to perform remedial activities. EPA installed extraction and monitoring wells on the Properties. Changes in the technology used to treat the arsenic-contaminated media caused delays in the progress of the remedial work for the contaminated soils and sediments.

14. EPA estimates that the duration of the required entry and access will be approximately four years.

15. Despite requests from EPA representatives over the last four months, Respondents have refused to grant access for the purpose of conducting the remedial actions described above on the Properties. These requests include:

a. On March 8, 2005, EPA sent Respondents an updated written consent for access. Respondents did not reply.

b. On March 19, 2005, the Army Corps of Engineers ("Army Corps") on-site Project Manager contacted Mr. Martelli at the request of EPA. Mr. Martelli stated that he had read the consent for access but had not signed the document.

c. On April 19, 2005, representatives from EPA met with Respondents to further detail the scope of the cleanup work on the Properties. On April 20, 2005, the Army Corps Project Manager provided Respondents with a map showing the extent of contamination and the pre-design excavation limits.

d. Over the next few weeks, the Army Corps Project Manager contacted Respondents by telephone numerous times to inquire whether the Respondents were ready to sign the access agreement and to answer any questions.

e. On May 11, 2005, EPA's Site Project Manager contacted Respondents to follow up on the access request. Respondents indicated that EPA should contact their attorney.

f. On May 12, 2005, May 13, 2005, and May 25, 2005, EPA representatives contacted Respondents' attorney, Richard Milstead, by telephone. Mr. Milstead's secretary reported that he was not available so EPA representatives left messages asking him to call. Respondents' attorney has not returned any of the calls.

g. On June 2, 2005, EPA contacted Respondents and informed them that their attorney had not returned EPA's calls. EPA's Project Manager warned Respondents that EPA must move forward to obtain site access to prevent costly project delays. He explained that EPA could issue an administrative order requiring Respondents to provide unimpeded access to the Site.

16. The remedial action work on the former Vineland Chemical Company site has been ongoing for four years. The work began with implementation of the groundwater remedy. Full-scale operation of the "On-Site Soils" soil washing treatment began in

the first quarter of 2004. EPA must remediate Respondents' Properties in a limited time frame because of the necessary integration of this work with the ongoing "On-Site Soil" work. Contaminated material from the Blackwater Branch and associated flood plain and wetlands must be blended with materials from the On-Site Soil work to achieve the desired soil washing plant feed characteristics.

17. The Properties owned by Respondents and identified in Paragraph 4 are facilities or other places or properties:

- a. where arsenic, a hazardous substance, has been deposited, and
- b. from or to which this hazardous substance has been released, and
- c. where entry is needed to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

18. Entry to the Properties owned or controlled by Respondents by the agents, contractors, or other representatives of the United States is needed for taking a response action within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

19. EPA's requests for access to the Properties have not been granted.

ORDER

20. Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondents are hereby ordered to provide EPA and its officers, employees, agents, contractors and other representatives, full and unrestricted access at all reasonable times to the Properties for the purpose of conducting response activities. These activities include:

1. Conducting investigatory and sampling activities including the installation of boreholes or monitoring wells;
2. Grubbing and clearing to allow for access to contaminated areas;
3. Installing or re-aligning fencing to ensure the security of remedial actions;
4. Installing access roads to allow for equipment mobilization to areas in need of remediation;
5. Diverting or piping of the Blackwater Branch;
6. Conducting de-watering activities along the Blackwater Branch or in the Blackwater Branch flood plain to

- accommodate excavation activities associated with the removal of arsenic contaminated media;
7. Installing sediment control measures along the Blackwater Branch;
 8. Installing sheet piling or other engineering devices to minimize the impacts of water infiltration into excavations;
 9. Excavation or dredging of contaminated sediment and or soil in the Blackwater Branch channel, flood plain and associated wetland areas;
 10. Trucking of contaminated material from areas of contamination;
 11. Backfilling and re-grading excavated areas; and,
 12. Restoration of the Blackwater Branch channel, flood plain and associated wetlands.

21. Respondents shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Properties pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

22. Nothing in this Order limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

23. This Order shall apply to and be binding upon Respondents and their successors, heirs and assigns, and each and every agent of Respondents and upon all other persons and entities who are under the direct or indirect control of Respondents, including any and all lessees of Respondents.

24. In the event of any conveyance by Respondents or Respondents agents, heirs, successors and assigns, of an interest in the Properties, Respondents or Respondents' agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Properties by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Properties so that their use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondents, or Respondents agents, heirs, successors and assigns, shall notify EPA at least thirty days prior to the conveyance of any interest in the Properties and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

GENERAL PROVISIONS

25. This Order and all of its terms and provisions shall become effective on the seventh calendar day after the date on which the Order is signed by the Regional Administrator of EPA - Region II.

26. This Order and all of its terms and provisions shall remain in effect until such time that the Site is deleted from the National Priorities List and Respondents are so notified in writing by the Director of the Emergency and Remedial Response Division, EPA - Region II, that all such activities have been completed.

27. Nothing in this Order shall affect in any manner the right of EPA to issue any other Administrative Orders to Respondents or to any other parties under CERCLA which relate to the Site.

28. Nothing in this Order constitutes a decision on pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

ENFORCEMENT

29. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty of Respondents of up to \$32,500 for each day that Respondents unreasonably fail to comply with this Order, as provided in Section 104(e) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 1721, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing in this Order shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose.

30. The failure of the Respondents to comply with any provision of this Order may be considered a violation of the Order. This violation may give rise to an enforcement action pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. §§9604(e)(5),

thereby subjecting Respondents to possible civil penalties of up to \$32,500.00 per day and other civil damages.

31. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions as it may deem necessary for any purpose, including the prevention or abatement of an imminent and substantial danger to the public health, welfare, or the environment arising from conditions at the Properties, and recovery of the costs thereof.

32. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondents, or against any entity which is not a party to this Order.

ADMINISTRATIVE RECORD

33. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours 9:00 AM and 4:30 PM at the EPA offices in New York. To review the Administrative Record, please contact Ronald Naman at 212 637-4375 to make an appointment. A copy of the Administrative Record is also available at the City of Vineland Department of Health.

OPPORTUNITY TO CONFER

34. Respondents shall have an opportunity to meet with officials of EPA - Region II to discuss the terms and provisions of this Order. Within three business days after receipt of this Order by Respondents, Respondents may request a conference with EPA, to be held no later than four business days after Respondents' request, on any matter pertaining to this Order, including its applicability, the factual findings and determinations on which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions which Respondents may have regarding this Order. Respondents may appear in person or by an attorney or other representative at the conference. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondents do not request a conference. EPA will deem Respondents to have waived their right to the conference or to submit written comments if they fail to request the conference or submit comments within the specified time periods.

35. If Respondents choose to confer with EPA, Respondents must request a conference by contacting:

Virginia A. Curry, Esq.,
Office of Regional Counsel
EPA - Region II, 290 Broadway - 17th Floor
New York, New York 10007-1866
(212) 637-3134.

Any request for this conference may be made by telephone, but any and all requests for a conference must be confirmed in a writing received by the Office of Regional Counsel, EPA - Region II, within the time periods described above. If Respondents choose to submit written comments, they should submit them to Ms. Curry at the address shown above.

EFFECTIVE DATE; COMPUTATION OF TIME

36. Because of the immediate need to conduct the activities described above, this Order shall be effective seven business days after its receipt by Respondents or Respondents' designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondents by facsimile, electronic mail, or oral communication; provided that if EPA does use one of these forms of communication, it will also confirm the notification by first class, certified or express mail to Respondents or their legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

37. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than Saturday, Sunday or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday or federal legal holiday, the period shall run until the next business day.

NOTICE OF INTENT TO COMPLY

38. On or before the effective date of this Order, Respondents shall notify EPA in writing whether Respondents will comply with the terms of this Order. Respondents' failure to

notify EPA of their unconditional intent to fully comply with this Order by the time the Order becomes effective shall be (1) construed as a denial of EPA's request for access, and (2) as of the effective date of the Order, treated as a violation of the Order. The written notice shall be sent to:

Virginia A. Curry, Esq.
Office of Regional Counsel
EPA - Region II, 290 Broadway - 17th Floor
New York, New York 10007-1866

TERMINATION

39. This Order shall remain in effect until the Director of the Emergency and Remedial Response Division of EPA - Region II or his designee notifies Respondents in writing that access to the Properties is no longer needed.

IT IS SO ORDERED:

FOR: U.S. ENVIRONMENTAL PROTECTION AGENCY

William McCabe

William McCabe

Acting Director

Emergency and Remedial Response Division

U.S.E.P.A. Region II

Date

June 5, 2005

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